

AMENDED IN ASSEMBLY APRIL 17, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2129

Introduced by Assembly Member Kelley

February 20, 2002

An act to amend Section 51298 of the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2129, as amended, Kelley. Local capital investment incentives: qualified manufacturing facilities.

Existing law authorizes cities and counties to pay capital investment incentive amounts to a requesting proponent of a qualified manufacturing facility. A “qualified manufacturing facility” is defined for these purposes to include a facility meeting certain criteria and that is either operated by a business described in specified provisions of the Standard Industrial Classification Manual, as described, or by a business engaged in the recovery of minerals from geothermal resources.

This bill would specify that the proposed facility would, if it meets the specified criteria, also meet the definition of a “qualified manufacturing facility” if it is a powerplant used for the production of electricity from one or more specified energy sources.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 51298 of the Government Code is amended to read:

51298. It is the intent of the Legislature in enacting this chapter to provide local governments opportunities to attract large manufacturing facilities to invest in their communities and to encourage industries such as high technology, aerospace, automotive, biotechnology, software, environmental sources, and others to locate and invest in those facilities in California.

(a) Commencing in the 1998–99 fiscal year, the governing body of a county, city and county, or city, may, by means of an ordinance or resolution approved by a majority of its entire membership, elect to establish a capital investment incentive program. In any county, city and county, or city in which the governing body has so elected, the county, city and county, or city shall, upon the approval by a majority of the entire membership of its governing body of a written request therefor, pay a capital investment incentive amount to the proponent of a qualified manufacturing facility for up to 15 consecutive fiscal years. A request for the payment of capital investment incentive amounts shall be filed by a proponent in writing with the governing body of an electing county, city and county, or city in the time and manner specified in procedures adopted by that governing body. In the case in which the governing body of an electing county, city and county, or city approves a request for the payment of capital investment incentive amounts, both of the following conditions shall apply:

(1) The consecutive fiscal years during which a capital investment incentive amount is to be paid shall commence with the first fiscal year commencing after the date upon which the qualified manufacturing facility is certified for occupancy or, if no certification is issued, the first fiscal year commencing after the date upon which the qualified manufacturing facility commences operation.

(2) In accordance with paragraph (4) of subdivision (d), the annual payment to a proponent of each capital investment incentive amount shall be contingent upon the proponent's payment of a community services fee.

(b) For purposes of this section:

1 (1) “Qualified manufacturing facility” means a proposed
2 manufacturing facility that meets all of the following criteria:

3 (A) The proponent’s initial investment in that facility, in real
4 and personal property, necessary for the full and normal operation
5 of that facility, made pursuant to the capital investment incentive
6 program, that comprises any portion of that facility or has its situs
7 at that facility, exceeds one hundred fifty million dollars
8 (\$150,000,000). Compliance with this subparagraph shall be
9 certified by the Trade and Commerce Agency upon the agency’s
10 approval of a proponent’s application for certification of a
11 qualified manufacturing facility. An application for certification
12 shall be submitted by a proponent to the agency in writing in the
13 time and manner as specified by the agency.

14 (B) The facility is to be located within the jurisdiction of the
15 electing county, city and county, or city to which the request is
16 made for payment of capital investment incentive amounts.

17 (C) The facility is either of the following:

18 (i) Operated by either of the following:

19 (I) A business described in Codes 3500 to 3899, inclusive, of
20 the Standard Industrial Classification (SIC) Manual published by
21 the United States Office of Management and Budget, 1987 edition,
22 except that “January 1, 1997,” shall be substituted for “January
23 1, 1994,” in each place in which it appears.

24 (II) A business engaged in the recovery of minerals from
25 geothermal resources, including the proportional amount of a
26 geothermal electric generating plant that is integral to the recovery
27 process by providing electricity for it.

28 (ii) A powerplant used for the production of electricity from
29 one or more of the following energy sources: *hydropower with a*
30 *generation capacity of 30 megawatts or less*, solar, wind,
31 geothermal, solid-fuel biomass, waste tire, municipal solid waste,
32 ~~digester gas, or hydropower with a generation capacity of 30~~
33 ~~megawatts or less.~~ *or digester gas.*

34 (D) The proponent is either currently engaged in commercial
35 production or engaged in the perfection of the manufacturing
36 process, or the perfection of a product intended to be
37 manufactured.

38 (2) “Proponent” means a party or parties that meet all of the
39 following criteria:

1 (A) The party is named in the application to the county, city and
2 county, or city within which the qualified manufacturing facility
3 would be located for a permit to construct a qualified
4 manufacturing facility.

5 (B) The party will be the fee owner of the qualified
6 manufacturing facility upon the completion of that facility.
7 Notwithstanding the previous sentence, the party may enter into a
8 sale-leaseback transaction and nevertheless be considered the
9 proponent.

10 (C) If a proponent that is receiving capital investment incentive
11 amounts subsequently leases the subject qualified manufacturing
12 facility to another party, the lease may provide for the payment to
13 that lessee of any portion of a capital investment incentive amount.
14 Any lessee receiving any portion of a capital investment incentive
15 amount shall also be considered a proponent for the purposes of
16 subdivision (d).

17 (3) “Capital investment incentive amount” means, with
18 respect to a qualified manufacturing facility for a relevant fiscal
19 year, an amount up to or equal to the amount of ad valorem
20 property tax revenue derived by the participating local agency
21 from the taxation of that portion of the total assessed value of that
22 real and personal property described in subparagraph (A) of
23 paragraph (1) that is in excess of one hundred fifty million dollars
24 (\$150,000,000).

25 (4) “Manufacturing” means the activity of converting or
26 conditioning property by changing the form, composition, quality,
27 or character of the property for ultimate sale at retail or use in the
28 manufacturing of a product to be ultimately sold at retail.
29 Manufacturing includes any improvements to tangible personal
30 property that result in a greater service life or greater functionality
31 than that of the original property.

32 (c) A city, special district, or school district may, upon the
33 approval by a majority of the entire membership of its governing
34 body, pay to the county, city and county, or city an amount equal
35 to the amount of ad valorem property tax revenue allocated to that
36 city, special district, or school district, but not the actual allocation,
37 derived from the taxation of that portion of the total assessed value
38 of that real and personal property described in subparagraph (A)
39 of paragraph (1) of subdivision (b) that is in excess of one hundred
40 fifty million dollars (\$150,000,000).

1 (d) A proponent whose request for the payment of capital
2 investment incentive amounts is approved by an electing county,
3 city and county, or city shall enter into a community services
4 agreement with that county, city and county, or city that includes,
5 but is not limited to, all of the following provisions:

6 (1) A provision requiring that a community services fee be
7 remitted by the proponent to the county, city and county, or city,
8 in each fiscal year subject to the agreement, in an amount that is
9 equal to 25 percent of the capital investment incentive amount
10 calculated for that proponent for that fiscal year, except that in no
11 fiscal year shall the amount of the community services fee exceed
12 two million dollars (\$2,000,000).

13 (2) A provision specifying the dates in each relevant fiscal year
14 upon which payment of the community services fee is due and
15 delinquent, and the rate of interest to be charged to a proponent for
16 any delinquent portion of the community services fee amount.

17 (3) A provision specifying the procedures and rules for the
18 determination of underpayments or overpayments of a community
19 services fee, for the appeal of determinations of any
20 underpayment, and for the refunding or crediting of any
21 overpayment.

22 (4) A provision specifying that a proponent is ineligible to
23 receive a capital investment incentive amount if that proponent is
24 currently delinquent in the payment of any portion of a community
25 services fee amount, if the qualified manufacturing facility is
26 constructed in a manner materially different from the facility as
27 described in building permit application materials, or if the facility
28 is no longer operated as a qualified manufacturing facility meeting
29 the requirements of paragraph (1) of subdivision (b). If a
30 proponent becomes ineligible to receive a capital investment
31 incentive amount as a result of an agreement provision included
32 pursuant to this subparagraph, the running of the number of
33 consecutive fiscal years specified in an agreement made pursuant
34 to subdivision (a) is not tolled during the period in which the
35 proponent is ineligible.

36 (5) A provision that sets forth a job creation plan with respect
37 to the relevant qualified manufacturing facility. The plan shall
38 specify the number of jobs to be created by that facility, and the
39 types of jobs and compensation ranges to be created thereby. The

1 plan shall also specify that for the entire term of the community
2 services agreement, both of the following shall apply:

3 (A) All of the employees working at the qualified
4 manufacturing facility shall be covered by an employer-sponsored
5 health benefits plan.

6 (B) The average weekly wage, exclusive of overtime, paid to
7 all of the employees working at the qualified manufacturing
8 facility, who are not management or supervisory employees, shall
9 be not less than the state average weekly wage.

10 For the purpose of this subdivision, “state average weekly
11 wage” means the average weekly wage paid by employers to
12 employees covered by unemployment insurance, as reported to the
13 Employment Development Department for the four calendar
14 quarters ending June 30 of the preceding calendar year.

15 (6) (A) In the case in which the proponent fails to operate the
16 qualified manufacturing facility as required by the community
17 services agreement, a provision that requires the recapture of any
18 portion of any capital investment incentive amounts previously
19 paid to the proponent equal to the lesser of the following:

20 (i) All of the capital investment incentive amounts paid to the
21 proponent, less all of the community services fees received from
22 the proponent, and less any capital investment incentive amounts
23 previously recaptured.

24 (ii) The last capital investment incentive amount paid to the
25 proponent, less the last community services fee received from the
26 proponent, multiplied by 40 percent of the number of years
27 remaining in the community services agreement, but not to exceed
28 10 years, and less any capital investment incentive amounts
29 previously recaptured.

30 (B) If the proponent fails to operate the qualified
31 manufacturing facility as required by the community services
32 agreement, the county, city and county, or city may, upon a finding
33 that good cause exists, waive any portion of the recapture of any
34 capital investment incentive amount due under this subdivision.
35 For the purpose of this subdivision, good cause includes, but is not
36 limited to, the following:

37 (i) The proponent has sold or leased the property to a person
38 who has entered into an agreement with the county, city and
39 county, or city to assume all of the responsibilities of the proponent
40 under the community services agreement.

1 (ii) The qualified manufacturing facility has been rendered
2 inoperable and beyond repair as a result of an act of God.

3 (C) For purposes of this subdivision, failure to operate a
4 qualified manufacturing facility as required by the community
5 services agreement includes, but is not limited to, failure to
6 establish the number of jobs specified in the jobs creation plan
7 created pursuant to paragraph (5).

8 (e) (1) Each county, city and county, or city that elects to
9 establish a capital investment incentive program shall notify the
10 Trade and Commerce Agency of its election to do so no later than
11 June 30th of the fiscal year in which the election was made.

12 (2) In addition to the information required to be reported
13 pursuant to paragraph (1), each county, city and county, or city that
14 has elected to establish a capital investment incentive program
15 shall notify the Trade and Commerce Agency each fiscal year no
16 later than June 30th of the amount of any capital investment
17 incentive payments made and the proponent of the qualified
18 manufacturing facility to whom the payments were made during
19 that fiscal year.

20 (3) The Trade and Commerce Agency shall compile the
21 information submitted by each county, city and county, and city
22 pursuant to paragraphs (1) and (2) and submit a report to the
23 Legislature containing this information no later than October 1,
24 every two years commencing October 1, 2000.

